

**NOT FOR PUBLICATION**

**SEP 29 2004**

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LARRY WALKER,

Defendant - Appellant.

No. 03-10650

D.C. No. CR-03-00142-RCB

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Robert C. Broomfield, District Judge, Presiding

Submitted September 17, 2004\*\*  
San Francisco, California

BEFORE: BEEZER, W. FLETCHER, and FISHER, Circuit Judges.

Larry Walker challenges the condition of his supervised release that requires him to submit to the collection of a DNA sample from saliva or the exterior surface of his hands or face. Walker claims that this condition violates his

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\*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\*This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Fourth Amendment right to be free from unreasonable searches. Given our recent decision in *United States v. Kincade*, 2004 WL 1837840 (9th Cir. Aug. 18, 2004) (en banc), we conclude that the collection of Walker's DNA while on supervised release is reasonable under the totality of the circumstances. *See id.* \*17.

Because the condition of supervised release was not in violation of law, we need not reach the question of whether the waiver of appeal provision in Walker's plea agreement bars the appeal of his claim. *See United States v. Bahe*, 201 F.3d 1124, 1126 n.2 (9th Cir. 2000); *United States v. Jackson*, 189 F.3d 820, 821 (9th Cir. 1999).

**AFFIRMED.**